

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.:

**02-21473**

**CIV-KING**

MAGISTRATE JUDGE  
O'SULLIVAN

ADVOCATING DISABILITY  
RIGHTS, INC., a Florida not-for-  
profit corporation, and CARLISLE  
WILSON, Individually

Plaintiffs,

vs.

**COMPLAINT**

**(Temporary and Permanent Injunctive Relief  
Demanded)**

GET WIRELESS, INC.,

Defendants.

Plaintiffs, ADVOCATING DISABILITY RIGHTS, INC., a Florida not-for-profit corporation, and CARLISLE WILSON, Individually (sometimes jointly referred to herein as "Plaintiff") sue the defendant(s), GET WIRELESS, INC., (sometimes referred to as "Defendant") for Injunctive Relief, Attorneys' Fees, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq, ("ADA") and in support state:

1. Defendant, owns; or leases; or leases to; or operates a place of public accommodation as defined by the ADA and the regulations implementing the ADA 28 CFR 36.201(a) and 36.104. Defendant is responsible for complying with the obligations of the ADA. The place of public accommodation that the Defendant owns, operates, leases or leases to is known as and is located at:  
**3540 Coral Way, Miami, Florida.**
2. Defendant has discriminated and is discriminating against the Plaintiff in violation of the ADA by failing to, inter alia, have accessible facilities as described below by January 26, 1992 (or January 26, 1993 if defendant has 10 or fewer

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**ORIGINAL  
(RED INK)**

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employees and gross receipts of \$500,000 or less):

- a. Parking does not comply with the Americans with Disabilities Act Architectural Guidelines (ADAAG) Sec. 4.6.
- b. Accessible routes do not comply with ADAAG Sec. 4.3.
- c. Bathrooms do not comply with ADAAG § 4.16 - 4.19.
- d. The discriminatory violations described above are not an exclusive list of the Defendant's ADA violations. Plaintiff requires an inspection of the Defendant's place of public accommodation in order to determine all of the discriminatory acts violating the ADA.

#### **JURISDICTION AND VENUE**

3. This action arises from a violation of Title III of the Americans With Disabilities Act, 42 U.S.C. § 12181, et seq, as more fully set forth herein. This Court has original jurisdiction pursuant to 28 U.S.C. § and 28 U.S.C. § 1343.
4. Venue lies in this district as the property which is the subject matter of this claim is located in this judicial district, and the Defendant is doing business in this judicial district.

#### **STATUTORY BACKGROUND**

5. On July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990, establishing important civil rights for individuals with disabilities, including the right to full and equal enjoyment of the goods, services, facilities, privileges, and access to places of public accommodations.
6. Pursuant to U.S.C. § 12182 and 28 CFR 36.201(a), no place of public

accommodation shall discriminate against an individual, on the basis of such individual's disability, with regard to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations at that place of public accommodation.

7. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993, if the Defendant has ten (10) or fewer employees and gross receipts of \$500,000.00 or less. 42U.S.C. 12181;28 CFR 36.508(a).
8. Plaintiff, Carlisle Wilson, is a resident of Ft. Lauderdale in Broward County, Florida. Plaintiff is disabled as defined by the ADA since his movements are restricted to a wheelchair.
9. Plaintiff, Carlisle Wilson, is a founding member and officer of Advocating Disability Rights, Inc., ("ADR"). ADR's primary purpose is to seek enforcement and compliance of improved real property with the ADA in areas where its members live and travel since they have and/or want to avail themselves on such improved real property for services and goods which are available to the public at large but have been and are restricted to people, like Carlisle Wilson, with disabilities because of illegal architectural barriers.
10. Plaintiff, Carlisle Wilson, became aware of Defendant's non-compliance of the ADA when he visited the Property on several occasions in 2001. Plaintiff plans on returning to the subject property to avail himself of the goods and services being offered at the property.
11. The barriers described herein have effectively denied and/or diminished Plaintiffs' ability to visit and/or use the property and have endangered Plaintiff's

safety and the safety of other disabled persons who also visit and/or may want to visit the property. For example, because Defendant does not have proper disabled parking or pathways leading to the property, Plaintiffs and other disabled persons have an increased risk of injury by being hit by oncoming motorists. Also, because the property does not have a ramp required and/or in compliance with the ADA, Plaintiffs and other disabled persons have an increased chance of bodily injury when entering and exiting the property.

12. Based on the above, the members of ADR, and other disabled persons have a realistic, credible, existing, and continuing threat of discrimination from Defendant's non-compliance of the ADA with respect to the property at issue as alleged above.

#### **THE PARTIES AND STANDING**

13. Plaintiff, ADVOCATING DISABILITY RIGHTS, INC., is a non-profit Florida corporation. The members of this organization include individuals with disabilities as defined by the ADA. This organization's purpose is to represent its members interests by assuring that places of public accommodation are accessible to and usable by the disabled and that its members are not discriminated against because of their disabilities. Plaintiff, and its members, have suffered and will continue to suffer direct and indirect injury as a result of the Defendant's discrimination until Defendant is compelled to comply with the requirements of the ADA. ADVOCATING DISABILITY RIGHTS, INC., has also been discriminated against because of its association with its disabled members

and their claims.

14. Plaintiff, CARLISLE WILSON, is a Florida resident, is sui juris and qualifies as an individual with disabilities as defined by the ADA.
15. Plaintiffs have reasonable grounds to believe that they are and will continue to be subjected to discrimination in violation of the ADA by the Defendant.

#### **THE INSTANT CLAIM**

16. Defendant is required to remove architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that has existed prior to January 26, 1992, 28CFR § 36.304(a); in the alternative, if there has been an alteration to Defendant's place of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the defendant's facility is one which was designed and constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then the Defendant's facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.
17. Appendix A to Part 36- Standards for Accessible Design (28CFR pt. 36, App. A) sets out guidelines for accessibility for buildings and facilities. These guidelines are to be applied during design, construction and alteration of such buildings and facilities to the extent required by regulations issued by Federal Agencies,

including the Department of Justice, under the ADA.

18. Defendant has discriminated against the individual and corporate Plaintiffs by denying them access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and or accommodations of its place of public accommodations or commercial facility in violation of 42 U.S.C. §12181 et seq., and 28 CFR § 36.302 et seq, as described herein.
19. The correction of these violations of the ADA is readily achievable or the Defendant is obligated to have its place of public accommodation readily accessible as defined by the ADA.
20. Plaintiffs have retained the undersigned counsel and are obligated to pay reasonable Attorneys' Fees including costs and expenses incurred in this action. Plaintiffs are entitled to recover these Attorney's Fees, costs and expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR §36.505.
21. Notice to Defendant is not required as a result of the Defendants failure to cure the violation by January 26, 1992 (or January 26, 1993 if Defendant has 10 or fewer employees and gross receipts of \$500,000. or less). All other conditions precedent have been met by Plaintiff or waived by the Defendant.
22. Plaintiff's are without adequate remedy at law and are suffering irreparable harm.
23. Pursuant to 42 U.S.C § 12188, this Court is provided authority to grant Plaintiffs Injunctive Relief including an order to alter the Defendant's facility to make those facilities readily accessible to the Plaintiff and all other persons with disabilities as defined by the ADA; or by closing the facility either temporary or permanently until such time as the defendant cures its violation of the ADA.

WHEREFORE, Plaintiff respectfully requests:

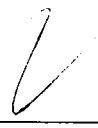
a. A temporary injunction and a permanent injunction providing for injunctive relief against the Defendant including an order to make all readily achievable alterations to the facility; or to make such facility readily accessible to and usable by individuals with disabilities to the extent required by the ADA.


b. An award of Attorney's Fees, costs and litigation expense pursuant to 42 U.S.C. §12205.

c. Such other relief as the Court deems just and proper.

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By:   
\_\_\_\_\_  
WILLIAM D. TUCKER, ESQ.  
Fla. Bar No. 865753

By:   
\_\_\_\_\_  
LAWRENCE J. MCGUINNESS, ESQ.  
Fla. Bar No. 814611

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# CIVIL COVER SHEET

02-21473

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ADVOCATING DISABILITY RIGHTS, INC., A  
Florida not-for-profit corporation, and  
CARLISLE WILSON, Individually

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF BROWARD  
(EXCEPT IN U.S. PLAINTIFF CASES)

William D. Tucker, 735 NE 3rd Ave., Ft.  
Lauderdale, FL 33304 954.453.4500 and

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)  
Lawrence J. McGuinness, 782 Le Jeune Rd.,  
Suite 350, Miami, FL 33126 305.461.9196.

## DEFENDANTS

GET WIRELESS, INC.,

MAGISTRATE JUDGE  
O'SULLIVAN

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT DADE  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

*Dade 1:02cv21473 King/O'Sullivan*

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans Excl. Veterans. <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>A LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions A OR B
<b>A REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>A CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS:</b> <input type="checkbox"/> 510 Motions to vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

42 U.S.C. § 12181 (Americans with Disabilities Act of 1990) - Action for temporary & permanent injunctive relief, Attorneys fees & costs.  
via 3 days estimated (for both sides to try entire case)

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$ fees & costs

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

MAY 15 2002